

U.S. Senate Republican Policy Committee
Larry E. Craig, Chairman Jade West, Staff Director
Legislative Notice

No. 53

April 12, 2000

S. 2323 – Worker Economic Opportunity Act

Calendar No. 481

Read the second time on March 30, 2000, and placed on the Calendar.

NOTEWORTHY

- The Senate has accepted a unanimous consent agreement to debate S. 2323 on the floor at 1:30 p.m. today for one hour of debate, equally divided, with no motions or amendments in order. A vote on final passage will occur on the bill at 2:30 p.m.
- The Worker Economic Opportunity Act (S. 2323) would bring federal labor law into the 21st century by removing outdated provisions that could prevent employers from offering stock options to hourly employees.
- S. 2323 enjoys wide bipartisan support. The bill has 17 Republican cosponsors and 11 Democrat cosponsors, including the Minority Leader.
- The Clinton Administration had not issued a Statement of Administration Position by press time. The Secretary of Labor stated she will recommend the President sign S. 2323.

HIGHLIGHTS

- Negotiations between Congressional Republicans, Democrats and the Labor Department produced S. 2323, which would:
 - (1) exempt employee stock option, stock appreciation right, stock purchase, and similar employer-provided grants or rights programs from being included in overtime pay calculations, and
 - (2) protect employers from any liability due to not including employee stock options in overtime calculations in the past.
- On February 12, 1999, the Labor Department issued an opinion letter that effectively would eliminate stock options for hourly employees — but leave salaried employees' stock options intact. The letter interpreted the Fair Labor Standards Act of 1938 to require that the value of an hourly employee's stock options be counted as part of his base pay for the purposes of calculating overtime.
- This policy could signal the end of stock options for hourly employees.
- The Worker Economic Opportunity Act would reverse this policy by amending the Fair Labor Standards Act to assure that stock options not be included for purposes of overtime calculation, and thus promote their widespread availability to hourly employees.
- The bill has 17 Republican cosponsors (Abraham, Bennett, Bunning, Collins, DeWine, Enzi, Frist, Gorton, Gramm, Hutchinson, Hutchison, Jeffords, Lugar, Mack, McConnell, Sessions, Warner) and 11 Democrat cosponsors (Bingaman, Daschle, Dodd, Feinstein, Kerrey, Kerry, Lieberman, Murray, Reed, Robb, Wyden).
- A similar bill, H.R. 4109, is pending before the House Committee on Education and the Workforce.

BACKGROUND

Generally, stock options are a form of compensation that enables employees to purchase stock in their company. The employee has the right ("option") to buy the stock at a set price when he chooses to do so, with some restrictions.

Popularity of Stock Options for Employees

According to the AFL-CIO website, “Nearly 15 million workers own stock in their companies through Employee Stock Ownership Plans, 401(k) plans, stock option plans, and other company stock plans. While some employees own stock in private firms, over \$330 billion is invested in publicly traded companies. And employees own more than 5% of the stock in about 1,000 of the 7,000 publicly traded companies in the United States (National Center for Employee Ownership)” [http://www.aflcio.org/paywatch/w_esop.htm]. Also, “Clearly, given the huge stock options exercised by top executives in the last few years, stock option grants have some worth” [http://www.aflcio.org/paywatch/ceou_terms.htm].

The National Center for Employee Ownership (NCEO) estimates 7.5 million Americans work for companies that offer stock options. An NCEO spokesman explains, “They’re a standard part of the compensation in the high-tech sector and they’re becoming increasingly popular everywhere else” [Pittsburgh Post-Gazette, 1/12/00].

In an article titled, “The 100 Best Companies To Work For,” *Fortune* magazine reports, “Some 36 of the 58 publicly held companies on this list offer [stock] options to all employees . . . More than 1,000 Charles Schwab employees have over \$1 million in their accounts from generous stock grants” [*Fortune*, 1/10/2000].

Department of Labor’s Opinion

Under the Fair Labor Standards Act of 1938, employers must pay hourly employees (often called “non-exempt employees”) 1.5 times their base pay (or “time-and-a-half”) for overtime work. (Salaried employees are exempt from this requirement.) Many portions of an employee’s compensation are explicitly excluded from base pay (*e.g.* health insurance, discretionary bonuses, profit-sharing plans, retirement plans). However, since stock options are a relatively new and innovative form of compensation, they are not explicitly excluded from overtime calculations.

On February 12, 1999, the Labor Department issued an opinion letter stating that the value of an hourly employee’s stock options must be counted as part of his base pay for the purposes of calculating overtime. This sent shock waves through the business community — particularly the high-tech sector, where stock options are a common and valuable tool for encouraging workers to join upstart companies — for a number of reasons.

1. **Calculating the additional overtime costs would be nearly impossible.** An option’s value cannot be determined until the employee purchases the stock, which typically comes years after receiving the option. Employers would have to (1) wait until the option is exercised, (2) calculate the difference between what the employee paid and the market value of the stock for each option, (3) spread that amount over the life of each option for up to two years, (4) include those amounts in the employee’s base pay, (5) calculate the additional overtime they must pay, (6) calculate the amount to be withheld for taxes, and (7) cut the employee a lump sum check.

2. **Any errors in calculation — real or perceived — would expose employers to prosecution and class action lawsuits.**

In the face of such costs, nearly all employers would eliminate stock options as a benefit for hourly workers. However, stock options for salaried employees would remain intact.

The Labor Department's opinion letter was based upon its (widely shared) view that the Fair Labor Standards Act (passed in 1938) did not envision the creation of stock options as a form of compensation. Upon recognizing this disconnect, the Labor Department joined congressional Republicans' efforts to protect hourly workers by fixing this outdated piece of law.

ADMINISTRATION POSITION

As of press time, the Clinton Administration had not issued a Statement of Administration Position. However, the Secretary of Labor has indicated she will recommend the President sign S. 2323.

POSSIBLE AMENDMENTS

Under the U.C. accepted by the Senate, no motions or amendments are in order.

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